

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF WASHINGTON

3
4
5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 v.

8 MATTHEW R. DESCAMPS,

9 Defendant.

10 No. CR-05-104-FVS

11 ORDER DISMISSING TWO 28
12 U.S.C. § 2255 MOTIONS
13 WITHOUT PREJUDICE

14
15 **THIS MATTER** comes before the Court without oral argument based
upon the government's request to dismiss two 28 U.S.C. § 2255 motions
without prejudice. The government is represented by Stephanie Van
Marter. The defendant is representing himself.

16 **BACKGROUND**

17 Judgment was entered on January 14, 2008. A notice of appeal was
18 filed the same day. The Ninth Circuit has yet to issue a ruling. On
19 January 31, 2011, the defendant filed a motion pursuant to 28 U.S.C. §
20 2255. The motion appears to assert a single ground for relief;
21 namely, that Mr. Descamps' appellate attorney, Mr. Dan Johnson, has a
22 conflict of interest. On February 1, 2011, Mr. Descamps filed a
23 second § 2255 motion. His second motion asserts several grounds for
24 relief. The government filed a consolidated response on March 2,
25 2011, in which it urges the Court to dismiss the defendant's two §
2255 motions without prejudice. According to the government, the
Ninth Circuit has not decided his direct appeal, and its rulings could

1 resolve issues he is raising in his § 2255 motions.

2 **RULING**

3 "Except under most unusual circumstances, . . . no defendant in a
4 federal criminal prosecution is entitled to have a direct appeal and a
5 § 2255 proceeding considered simultaneously in an effort to overturn
6 the conviction and sentence." *Jack v. United States*, 435 F.2d 317,
7 318 (9th Cir.1970), cert. denied, 402 U.S. 933, 91 S.Ct. 1530, 28
8 L.Ed.2d 867 (1971). No circumstances exist in this case that would
9 justify departure from this well-established rule.

10 **IT IS HEREBY ORDERED:**

11 1. The defendant's "Motion Under 28 U.S.C. § 2255 to Vacate, Set
12 Aside, or Correct Sentence by a Person in Federal Custody" (**Ct. Rec.**
13 **467**) is dismissed without prejudice pending the Ninth Circuit's ruling
14 concerning the defendant's appeal of the judgment.

15 2. The defendant's "Motion Under 28 U.S.C. § 2255 to Vacate, Set
16 Aside, or Correct Sentence by a Person in Federal Custody" (**Ct. Rec.**
17 **468**) is dismissed without prejudice pending the Ninth Circuit's ruling
18 concerning the defendant's appeal of the judgment.

19 **IT IS SO ORDERED.** The District Court Executive is hereby
20 directed to enter this order and furnish copies to the defendant and
21 to counsel for the government.

22 **DATED** this 1st day of April, 2011.

23 _____
24 s/ Fred Van Sickel
25 Fred Van Sickel
26 Senior United States District Judge